In the High Court of Judicature at Madras

Dated: 12/08/2004

Coram

The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P. No.9158 of 2004
and W.P.Nos., 9740, 15652, 16067 and 17961 of 2004

W.P. No.9158 of 2004

1. Minor D. Ram
2. Minor D. Shyam,
rep. by father and natural
Guardian Dr. D. Balasubramanian. .. Petitioner

-Vs-

Jawaharlal Institute of Post Graduate
Medical Education and Research,
rep. by its Dean
(Directorate General of Health Services)
Pondicherry-605 006. .. Respondent

W.P. No.9740 of 2004 :

K. Sandirakasu .. Petitioner

vs.

1. The Director General of Health
Services, New Delhi.

2. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research,
Pondicherry.

3. The Government of Pondicherry,
rep. by Collector, Revenue Department,
Pondicherry. .. Respondents

W.P. No.15652 of 2004 :

S. Vijayashankar, Minor,

rep. by father and natural guardian
K. Sandirakasu. .. Petitioner

vs.

1. The Director General of Health
Services, New Delhi.

2. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research,
Pondicherry.

3. The Government of Pondicherry,
rep. by Collector, Revenue Department,
Pondicherry.

4. Arul Prakash
5. B. Priyavadhana
6. Anjani Nandan Vaddi
7. P. Shoba Rani
8. B. Sahithya
9. P. Shakthi
10.P. Sathesh
11.K. Elayavendhan
12.B.S. Arasu .. Respondents

W.P. No.16067 of 2004 :

Minor B. Sahithya, rep. by
her mother Dr. N. Chitra. .. Petitioner

vs.

1. Dean,
Jawaharlal Institute of Post Graduate
Medical Education and Research,
Pondicherry-605 006.

2. The Registrar (Academic),
Jawaharlal Institute of Post Graduate
Medical Education and Research,
Pondicherry-605 006. .. Respondents

W.P. No.17961 of 2004 :

P. Satheesh, Minor, rep. by
his father and natural guardian
Ponnarmeni. .. Petitioner

vs.

1. The Director General of Health
Services, New Delhi.

2. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research,
Pondicherry.

3. The Government of Pondicherry,
rep. by Collector, Revenue Department,
Pondicherry.

4. Arul Prakash Pandian
5. Priyavadhana
6. Anjani Nandan Vaddi
7. P. Shoba Rani
8. B. Sahithya
9. P. Shakthi .. Respondents

PRAYER : Writ Petitions filed under Article 226 of the Constitution
of India for the reliefs stated therein.

For Petitioners : Mr. V. Ajay Kumar
(For petitioner in W.P.
No.15652 of 2004)
Mr. R. Krishnamurthy,
Senior Counsel for
Mr. Vijay Narayan
(For petitioners in
W.P. No.9158 of 2004)
Mr. A. Sasidharan and
Mr. S. Ashok Kumar
(in W.P. No.16067 of 2004)

For Respondents : Mr. V.T. Gopalan,
Additional Solicitor General
of India, assisted by
Mr. M.T. Arunan, A.C.G.S.C.

Mr. Sasheedharan for Government
Pleader (Pondicherry) (For R-3)

Mr. T. Eswaradhas (For R-4 in
W.P. No.15652 of 2004)

:O R D E R

In all these writ petitions, the Prospectus issued by the
Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER),

Pondicherry is being challenged with regard to Clause 3.1. Clause 3 .1 of the Prospectus reads thus :-

"3.1 Number of Seats : Seventy-five seats are available
for admission during 2004 to the First Year M.B.B.S. Course. These seats are distributed as under :

(a) Open General 14
(b) Open Scheduled Caste 8
(c) Open Scheduled Tribe 4
(d) Pondicherry General 15
(e) Pondicherry Scheduled Caste 5
(f) Seats to be filled on the basis
of Common All India Entrance
Test by CBSE 11

(g) Government of India nomination
subject to fulfillment of basic
requirements laid down, vide
para 2.1, 2.2 and 2.3 18

Total 75"

Clause 3.5.1 reads thus :-
"3.5.1 Definition of Pondicherry Union Territory Residents :
The 20 Seats reserved for Pondicherry General and Pondicherry Scheduled Castes are open to applicants who are Pondicherry Residents provided he/she is an Indian National and satisfies either of the following two criteria:
(a) Those candidates / their parents residing continuously
in the Union Territory of Pondicherry for at least five years immediately preceding the date of application.
(b) Children of Central/State Government Servants,
including employees of Public Sector undertaking under the Central/State Government posted and serving in the Union Territory of Pondicherry for at least a minimum period of ONE year prior to the last date for submission of application.

NOTE : Residence Certificate must be produced in the prescribed form
at the time of admission."
2. In Writ Petition Nos.15652 and 17961 of 2004, the petitioners claim that when it is settled law that a person migrating from one State/Union Territory to another State/Union Territory cannot carry the benefit of reservation he has in the State or the Territory of his origin to the place where he has migrated, the definition is unconstitutional. The definition

denies the Pondicherry Scheduled Caste persons who have Pondicherry as their place of origin, their right. The applicants who belong to the Scheduled Castes and who were born in Pondicherry are denied their right of reservation.

3. Writ Petition No.9158 of 2004 has been filed on the ground

that when out of the seats reserved for Scheduled Castes a special concession has been made for Pondicherry Scheduled Castes, there is no justification to deny a similar concession to Pondicherry Scheduled Tribes.

4. Writ Petition No.9740 of 2004 has been filed by the petitioner in W.P. No.15652 of 2004 for quashing the Prospectus on the ground that it is unconstitutional.

5. Writ Petition No.16067 of 2004 has been filed by a student who is found her name in the students admitted under the Pondicherry Scheduled Caste category, but is denied her seat because of interim orders obtained in this Court, directing the respondent to reserve one seat.

6. W.P. Nos.9740, 15652 and 17961 of 2004 : In all these matters, the petitioners submit that the definition of Pondicherry Scheduled Castes is contrary to the law laid down in the judgments in 1990 (3) S.C.C. 130 [Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Others], and 1994 (5) S.C.C. 244 [Action Committee on Issue of Caste Certificate of Scheduled Castes and Scheduled Tribes in the State of Maharashtra & Another vs. Union of India & Another] and is also violative of Articles 341 and 342 of the Constitution of India. It was also submitted that the entitlement to the right to be considered for admission under the reservation quota should be based on the Presidential Order, and only a person who is resident as on that date will be entitled to the benefits of being considered as a Pondicherry Scheduled Caste.

7. Reference is also made to the Ministry of Home Affairs letter dated 22.3.1977 with regard to the issue of Scheduled Castes and Scheduled Tribes. In this, it is specified that as per Articles 341 and 342 of the Constitution, the President issues orders notifying the Scheduled Castes and Scheduled Tribes in relation to a particular State or Union Territory from time to time. But, the people belonging to the same caste, but living in different States may not suffer the same disability and therefore, the residence of a particular person in a particular locality has a special significance. This was stressed in order to give guidelines to the authorities to issue certificates. According to the learned counsel for the petitioners, when this is the legal position, the Prospectus must be quashed since the requirement of residence is contrary to the Constitutional requirements. Apart from the two judgments referred to above, the learned counsel also referred to the judgment of S.S. Subramani, J. in W.P. Nos.9343 of 1997 Batch as well as the judgment of a Division Bench in Writ Appeal Nos.247 and 818 of 1996.

8. As regards the petitioner in W.P. No.9158 of 2004, who claims that Pondicherry Scheduled Tribes should also be included, his case is that when there is a specific provision made for Pondicherry Scheduled Castes, the Pondicherry Scheduled Tribes who satisfy all the requirements - there can be no dispute that he belongs to the Scheduled Tribe, his father having graduated from the JIPMER under the Scheduled Tribe quota and also their having been residents of Pondicherry for more than five years - the omission to provide a quota for Pondicherry Scheduled Tribes violates the Constitutional right of

the petitioner. It was also pointed out that during the earlier years, there was such a reservation and that has been removed, which has resulted in Constitutional violation.

9. The learned Additional Solicitor General of India appearing on behalf of the respondents would submit that this question had already been decided in 2000 Writ L.R. 496 [Puvvala Sujatha vs. Union of India & Others] by P. Shanmugam, J. That case also dealt with the admission to M.B.B.S. in JIPMER and this very Prospectus was challenged therein. The learned Judge in that case had considered the judgments reported in 1990 (3) S.C.C. 130 and 1994 (5) S.C.C. 244 cited supra and had dismissed the writ petitions, finding no illegality in the Prospectus. Therefore, according to the learned Additional Solicitor General, it is not possible to resuscitate the same question once again. Reference was also made to the judgment in 2001 (2) M.L.J. 311 [Bharathi vs. The Secretary to Government, Health and Family Welfare Department, Chennai], in which the petitioner challenged the clause in the Prospectus of the Tamil Nadu Professional Courses Medical / Dental / Paramedical which insisted that students should have studied both Plus One and Plus Two classes in the schools located in the Village Panchayat. In that case, D. Murugesan, J. held that reservation is only by way of concession and the petitioner cannot challenge it as a matter of right similar to a right which a candidate can claim under the rule of reservation. According to the learned Judge, a concession such as this is granted by the Government, which can also withdraw it if it chooses to do so, whereas the reservation quota cannot be withdrawn.

10. Learned Additional Solicitor General referred to the Scheduled Castes and Scheduled Tribes that are enumerated as per the Presidential Notification in each State or Territory, as the case may be. It was shown from a Model Roster for Reservation that as regards the Union Territory of Pondicherry, there are 16 Scheduled Castes, but no Scheduled Tribes and 27 O.B.Cs. The Note to this Model Roster which was produced shows that for Delhi, the Rosters which are prescribed for recruitment on an all India basis is to be followed; for Goa, it will be the same as in the Union Territories of Daman and Diu and therefore, when there are no Scheduled Tribes notified for the Union Territory of Pondicherry, the Prospectus did not allocate any seat for Pondicherry Scheduled Tribes. The judgment in 1978 (II) M.L.J. 27 [Miss Mary Varghese vs. Principal, Jawaharlal Institute] was referred to, in which the petitioner challenged the Constitutional validity of the selection made on the ground that the selection of students on the basis of nativity was unconstitutional. There, under the head ' Pondicherry General', seats were allotted also on the ground of nativity. The Pondicherry residents were defined in that as :
(1) Natives of Pondicherry by virtue of birth;
(2) Candidates having continuous residence for five years or more at the time of submission of application form;
(3) The wards of Central Government employees including employees of Public Sector undertakings under Central Government posted in the Union Territory of Pondicherry irrespective of the period of their residence in the Union Territory.

11. In the present Prospectus, a native of Pondicherry is not included, but the definition of Pondicherry residents is somewhat similar to Category 2 and Category 3 above. In the above decision, the learned Judge held as follows :-

"One can well understand that the persons having residence at Pondicherry being given encouragement to get admission in the local Medical College. Equally, it may be considered reasonable for the wards of the Central Government employees working in Pondicherry to gain admission on that score."

It is now urged that the clause relating to residence and the clause relating to wards of Central Government were held to be reasonable and therefore, even in the year 1978, when a challenge was made, though only to the clause relating to nativity, the same was upheld. The learned Additional Solicitor General would submit that this question has already been decided by P. Shanmugam, J. The petitioners having participated in the examinations knowing fully well the definition of Pondicherry Residents and knowing fully well that no quota was reserved for Pondicherry Scheduled Tribes, cannot now challenge the Prospectus as held in the said judgment after having met with rejection.

12. The judgment reported in 2000 Writ L.R. 496 cited supra can be looked into first to see whether that judgment answers all the questions raised by the petitioners herein. The basic facts are almost identical inasmuch as the application is to JIPMER for the First Year M. B.B.S. Course. Even in that year, the number seats was 75 and the allotment of seats was made as in the instant case. The prayer was also for quashing of Clause 3.5.1. of the Prospectus. In that case, the petitioner had made a wrong statement and obtained a resident certificate on that basis. But, however, the learned Judge had considered the legal position of the Circular issued by the Government of India, Ministry of Home Affairs dated 22.3.1977, which is referred to in the above paragraph and it was held as follows :-

"Thus, the legal position as per the circular is that the term residence for the purpose of acquiring Scheduled Caste status is the place of permanent abode of their parents at the time of notification of the Presidential Order under which they claim to belong to such a caste. The issue of Community Certificate is not to be confused with the eligibility criteria laid down by the second respondent."

Further, it was observed as follows :-

"The second respondent being a Central Government institution, they have reserved eight seats for all the Scheduled Caste candidates. However, as a concession, in the place of the location of the institution, five seats are set apart for residents of Pondicherry Scheduled Castes. This is not to be treated as a reservation under Article 16(4). It is only a concession shown and a source of selection for the colleges on the basis of the location. Just like Pondicherry General, where 15 seats are located to residents of Pondicherry, similarly, five seats are located to residents of Pondicherry. Those residents have no connection with the Scheduled Caste Presidential Notification. Further, it cannot be in any way, restricting the right of the Scheduled Castes in the reservation of allotment to the eight seats reserved for Scheduled Castes.

.....
Thus, the allotment of seats on the basis of residential requirement to Scheduled Caste candidate is not a reservation under Article 15(4) or 16(4) of the Constitution of India. It is a concession or a source of selection decided by the Central Government on the basis of the location of the institution within Pondicherry State. "

The learned Judge also referred to A.I.R. 1971 S.C. 1762 [D.N. Chanchala vs. State of Mysore], wherein it was observed by the Supreme Court, "The Government is entitled to lay down sources from which selection would be made. A provision laying down such sources is, strictly speaking, not a reservation. It is not a reservation as understood by Article 15 against which objection can be taken on the ground that it is excessive."

This is applicable to educational institutions run by the Central Government and not the State Government. Therefore, the ratio laid down in the judgments in 1990 (3) S.C.C. 130 and 1994 (5) S.C.C. 544 will not apply to the facts of the present case since they related to admissions in institutions run by the State Government. The submissions made by the counsel have already been decided by P. Shanmugam, J. and I am not persuaded to differ from that view.

13. Further, as far as Central Government institutions are concerned, no distinction is made between Scheduled Caste candidates who have the origin in a particular State or Union Territory and Scheduled Caste candidates who have migrated. This clarification is obtained in the Government of India, Department of Telecom Letter No.1-13/92-SCT dated 18/31.8.1992. As per the clarification obtained from the Ministry of Welfare and Ministry of Home Affairs, Department of Personnel and Training, there is no distinction between origin and migration cases as far as Central Government institutions are concerned. They are applicable only to State Government services and State Government educational institutions. Applying this criteria and in view of the fact that the conditions in Clause 3.5.1 of the Prospectus were met, respondents 4 to 12 have been admitted. The percentage of reservation for Scheduled Caste candidates in the respondent Institution is 15% and out of the 75 seats, 20 seats are reserved on residential basis and for the remaining 55, if 15% reservation is applied, it comes to 8.25 and therefore, 8 seats are given under the Open Scheduled Caste category. As regards the 20 seats, 15% reservation will actually come to three seats. On the other hand, five seats are given for Pondicherry Scheduled Castes. Therefore, the quota for Scheduled Castes has not been diminished. Out of that quota, as a concession, the Pondicherry Scheduled Caste candidates, as defined in the Prospectus, have been given five seats. The petitioner has participated in the examination quite aware of the reservation for Pondicherry Scheduled Castes. Having participated in the examinations, he now finds himself out of the running since other students who also applied under the Pondicherry Scheduled Caste category have acquired more marks than him; so, he has laid the challenge. There is no violation of the Constitutional requirement of reservation.

14. Further, from the counter affidavits filed by the respondents, it is seen that the fourth respondent belongs to Pallar Community, which is

listed as No.9 in the Constitution (Pondicherry) Scheduled Castes Order, 1964. As regards the fifth respondent, the petitioner has no grievance since according to him, the fifth respondent is a Pondicherry origin Scheduled Caste candidate. As regards the seventh respondent, it is seen that he belongs to Adi Dravida Community, which is No.2 in the Schedule and they are Scheduled Caste candidates of Pondicherry and they are also residents of Pondicherry. The same is the case with the eighth respondent, who filed W.P. No.16067 of 2004. Her Admission Card which has been filed in the typed set of papers shows her as a Pondicherry Scheduled Caste candidate and therefore, she claims that her entitlement to one of the five seats which has also been granted by the College cannot be thwarted by the petitioners in these two writ petitions on the ground that the definition of Pondicherry Scheduled Castes is contrary to the Constitution.

15. The same issue had come up for consideration, of course, with regard to employment, in 2004 (1) S.C.C. 530 (Chandigarh Administration vs. Surinder Kumar) with regard to the Union Territory of Chandigarh, wherein it was held,
"In the present case we have noticed that the Government of India instructions contained in the letter dated 26-8-1986 specifically permit that a recognised Scheduled Caste/Scheduled Tribe of any other State or Union Territory would be entitled to the benefits and facilities provided for Scs/STs in the services in the Union Territory of Chandigarh. This letter is specifically addressed by the Government of India to the Home Secretary, Chandigarh Administration and deals with employment in the Union Territory of Chandigarh. Therefore, there is no reason to ignore the instructions contained in the said letter."

The decisions in 1990 (3) S.C.C. 130 (cited supra) and 1994 (5) S.C. C. 244 (cited supra) were also referred to and the Supreme Court held,
"The judgments relied upon by the learned counsel for the appellant only decide the constitutional aspect of the government policy on the subject at a given time while leaving the policy decision as to what benefits are to be conferred on persons belonging to reserved categories with the Government of India. In the present case the Government of India has conveyed its decision on the point vide its letter dated 26-8-1986 which has not been modified. Therefore, the instructions contained in the said letter which were admittedly being followed till 7-9-1999, in our view, continue to be in force. There is no reasonable basis to discontinue the said decision with effect from 7-9-99 9. No reason or basis has been disclosed for discontinuing the same with effect from the said date."

It is seen that in this case the Supreme Court had accepted the decision taken by the Government to permit in the letter dated 26-08-1980 referred above.

16. But this decision came up again for consideration in 2004 (3) S.C.C. 132 (S. Pushpa vs. Sivachanmugavelu) in a case that arose out of a decision of Central Administrative Tribunal at Madras with regard to the matter of reservation in the Union Territory of Pondicherry, wherein the Supreme Court held as follows :
"Some persons belonging to the Scheduled Castes in relation to

the State of Tamil Nadu migrated to the Union Territory of Pondicherry and on the basis of certain notifications issued by the Government of India, as also the Union Territory of Pondicherry the benefit of reservation was made available to them and such persons thus got employment in the Union Territory of Pondicherry. The Central Administrative Tribunal, Bench at Madras, set aside such appointments/promotions with a direction to review the selection in regard to the reserved quota excluding the migrated Scheduled Caste candidates from consideration."

Relying on 1990 (3) SCC 130(cited supra) and 1994 (5) SCC 244 (cited supra) the Central Administrative Tribunal and this Court held,
"he would not carry with him the status of a Scheduled Caste candidate to the State to which he has migrated, nor can he claim such benefit in that State as available to him as a Scheduled Caste candidate in his State."
The attention of the Supreme Court was referred to certain G.O. and letters.
"GO issued by the Government of India dated 4-2-1974 by which a clarification was conveyed to the Lt. Governor of Pondicherry that Scheduled Caste/Tribe candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for Scheduled Castes/Tribes in Pondicherry. Our attention has also been drawn to another notification dated 6-1-1993 issued by the Government of Pondicherry referring to, amongst others, the government order dated 4-2-1974 issued by the Government of India clarifying that since Pondicherry is a Union Territory, all orders regarding reservation for Scheduled Castes, Scheduled Tribes in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration also. Therefore, Scheduled Caste/ Scheduled Tribe candidates from outside Pondicherry would also be eligible for vacancies reserved for Scheduled Castes, Scheduled Tribes in the Union Territory Administration."
It was also contended that,
"in view of the provisions contained under Article 239 of the Constitution of India. The Union Territory of Pondicherry itself has also issued a circular on the same lines."
Finally, the Supreme Court held,
"It is true that some distinction has been sought to be drawn by the respondents between the decision rendered by us in the case of Chandigarh Admn.(Arising out of SLP(C)No.20366 of 2002 From the Judgment and Order dated 16-08-2002 of the Bombay High Court in SA No.248 of 2002) and the cases in hand, also on the basis that the points raised here were not under consideration in the case of Chandigarh Admn. we, however feel that in case the impugned decisions of the High Court and the Central Administrative Tribunal are upheld, in support of which some arguable points having prima facie merit have been raised, it may sound some conflict with the decision rendered by us in the case of Chandigarh Admn.
Therefore, in our view, it would be appropriate that these cases are placed before a Bench of three Hon'ble Judges,so as to consider the broader issues raised and lay down the law considering all aspects and provisions of the Constitution and other laws on the subject."

So the law declared by the Supreme Court as on date with regard to this issue

is stated in Chandigarh Admn. Until a different decision is given, the stand taken by respondents in this regard, though this is with regard to admission, is in accordance with the law declared by the Supreme Court in Chandigarh Admn. case.

For all the reasons stated above, the writ petitions are dismissed.
In view of the above, W.P. No.16067 of 2004 is allowed.

17. W.P. No.9158 of 2004 :
The writ petitioners belong to the Scheduled Tribe community. It is their case that when Pondicherry Scheduled Castes have been allotted five seats, there is no reason why the Pondicherry Scheduled Tribes should not be awarded any seat. The petitioners claim that they are entitled to be considered for selection.

18. It is seen that there are no Scheduled Tribes in the Union Territory of Pondicherry and therefore, no reservation is made Pondicherry Scheduled Tribes. The petitioners only claim that they should be considered under the Pondicherry Scheduled Tribes category and that is their prayer. The petitioners seek a declaration that the Prospectus should be held to be unconstitutional and invalid insofar as it fails to make a reservation for Pondicherry Scheduled Tribe candidates. Any reservation made on the basis of residence, be it Pondicherry Scheduled Castes or Pondicherry Scheduled Tribes, is not a reservation under Articles 15(4) of 16(4) of the Constitution. The reservation made on the residential basis is, as has already been seen, only a concession and therefore, the petitioners cannot claim as a matter of right that reservation should be made for Pondicherry Scheduled Tribes. There is a reservation made for Scheduled Tribes under the Open Category and whether they are Pondicherry residents or migrants or otherwise, they will be considered only under this category. Therefore, the prayer that is sought for by the writ petitioners in this writ petition cannot be granted and the writ petition is dismissed. It is seen that Interim orders passed by this Court have prevented some of the students who have got admission under the Pondicherry Scheduled Caste quota, which has been upheld, from attending classes. The students shall be permitted to join the courses forthwith according to the list finalised by the respondent.

19. However, we must point out an error in the manner in which seats have been allotted by the respondent Institution applying the rule of reservation. Paragraph 3 of the counter filed by the respondent Institution reads as follows :-
"I humbly submit that when the MBBS seats for JIPMER was increased from 65 to 75, the Ministry of Health & Family Welfare, New Delhi has sent the revised allocation as follows :
Open General .. 14
Open Scheduled Caste .. 8
Open Scheduled Tribe .. 4
Pondicherry General .. 15
Pondicherry Scheduled Caste .. 5
All India Entrance Examination by CBSE .. 11
Govt. of India nominations .. 18

Since this Institute is under the administrative control of Government of India, Ministry of Health & Family Welfare, New Delhi, the distribution orders issued by the Ministry of Health & Family Welfare is as per Letter dated 03.10.1991 (Annexure-I).

The total reservation for Open Scheduled Tribe comes to six seats out of 75 seats (i.e. 7.5/100 x 75 = 5.62 rounded to 6 seats). Out of 6 seats, 4 seats already given to Open Scheduled Tribe, the balance 2 seats is added to Pondicherry Scheduled Caste since there is no promulgation orders for Pondicherry Scheduled Tribe. After excluding 20 seats reserved for regional reservation for Pondicherry Union Territory, the remaining seats available are 55. The reservation for Open Scheduled Tribe for 55 seats is 7.5/100 x 55 = 4.12 seats. So there is no shortage for Open Scheduled Tribe. As far as Pondicherry region is concerned there is no promulgation order for Pondicherry Scheduled Tribe, the reservation is as follows 7.5/100 x 20 = 1.5 is rounded to 2 seats. These 2 seats are added to Pondicherry Scheduled Caste i.e. 3 + 2 = 5 seats. Even for Open Scheduled Caste, the reservation is 15% of 55 seats is 8.25, therefore, 8 seats are given to Open Scheduled Caste.

Further, it is informed, out of total 75 seats, 18 seats are earmarked for Government of India nominations. Only 57 seats are filled by Entrance Examination basis including 11 seats filled by All India Pre-Medical Entrance Examination conducted by C.B.S.E. Further, out of 18 seats earmarked for Government of India nominations, every year more than 5 Scheduled Tribe candidates are nominated by Government of India. During the last 5 years, the Scheduled Tribe candidates nominated by Govt. of India are as follows :

1999-2000 - 7
2000-2001 - 6
2001-2002 - 6
2002-2003 - 7
2003-2004 - 7

Hence, even if it is calculated for 75 seats, the Constitutional reservations comes to 6 seats but actual admission is 11 seats in every year, which is more than the Constitutional reservations. Moreover, the Union Territory of Pondicherry has not made any reservation for Pondicherry Scheduled Tribe. Hence, this Institute has also not reserved/earmarked any seats for Pondicherry Scheduled Tribe. There is no promulgation order for Pondicherry Scheduled Tribe."

It appears that by this calculation, the Scheduled Tribe category has lost two seats. The respondents should remember that the Scheduled Tribe reservation quota cannot be reduced. But, that is really irrelevant as the fact that Scheduled Tribe candidates are nominated every year will not alter the fact that as per the present allotment, the Scheduled Tribe category gets less than what it is entitled to.

20. However, the fact that the allotment has not been done properly will not come to the aid of the petitioners, since their claim is only under the Pondicherry Scheduled Tribe category. No allotment has been made for this

category and cannot be made for reasons stated above. Therefore, this writ petition is also dismissed.

21. W.P.M.P. No.21973 of 2004 is filed by one S. Vijayashankar and W.P.M.P. No.25319 of 2004 has been filed by the Association for Protection & Welfare of Pondicherry U.T. Origin Scheduled Caste seeking to implead themselves as second respondents. According to them, they should be heard in this regard, since allotment to Pondicherry Schedule Tribe will affect their right. All that the impleading party can be heard to say is that the Scheduled Caste quota cannot be reduced and that the definition is unconstitutional. We have already seen that in the allotment, the SC has been given two more than what it is entitled to and as regards the definition that have no bearing on the issue to be decided in this case. Hence, both these W.P.M.Ps. are dismissed.

22. However, there will be no order as to costs. Consequently, the connected W.P.M.Ps. are closed.

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Index : Yes
Website : Yes

To

1. Jawaharlal Institute of Post Graduate
Medical Education and Research,
rep. by its Dean, Pondicherry-605 006.

2. The Director General of Health
Services, New Delhi.

3. The Collector,
Revenue Department,
Government of Pondicherry,
Pondicherry.